

TITUS VS. THE S. P. R. R.

EVIDENCE IN BEHALF OF THE PLAINTIFF.

Full Text of Judge Hawley's Decision.

The contention in this case was whether there was any evidence that defendant obstructed the culvert which it had constructed over the public highway leading from the town of Truckee to Tahoe City, by depositing snow therein? Whether it was legally responsible for an injury resulting therefrom? and whether plaintiff was guilty of contributory negligence in driving into the culvert under the circumstances detailed in the evidence.

The case of J. C. Titus, vs. the Southern Pacific Company.

Extracts from the reporters notes of evidence.

J. C. Titus testified as follows:

"This Sunday morning we had some work to do in the slaughter-house and it was customary for him to help on Sundays: * * * So that morning about half past eight or nine o'clock I should judge, went to the slaughter-house - he and I together. We had no trouble and went through the culvert and went to the slaughter-house."

Q. What were you driving in?

A. Sleigh with two horses.

Half past twelve or one o'clock.

* * * I got in the sleigh and started for the town. In going to the town just before I got to the culvert, I saw five engines and a pusher going down ahead of me. * * * There was nothing the matter with it (the culvert) in the morning when I went through so I drove into the culvert. It was a very blinding storm. * * * I drove down under this culvert and I hastened up and didn't know anything until the team was out from underneath the culvert. All I recollect was that I went in. When I came to I found myself hollering and suffering terribly and all doubled up in a knot. * *

"I went under the first timber and I felt something touch my head. I ducked my head and then the other timber caught me back of the shoulders, and having this foot on the foot-board * * * and this timber came in here (showing) it threw my chest right down on my knees, which just caved me in, and the timber crowded me back right over the foot-board. It broke my back in two and knocked some of my ribs loose, and I was all doubled up in this shape (showing) when I was found" * * *

Q. Was there plenty of room for you and your companion to go through this trestle (culvert) in the morning?

A. Yes Sir.

Q. What were they doing with the engines and the pusher?

A. They were pushing the snow off the track. * * *

Q. Did you see snow being pushed ahead on these pushers?

A. Yes sir; I could see a good deal of snow on the pusher ahead. * * *

Q. Do you know what the condition of the culvert was? * * *

A. There was just the wall and the timbers and the ties laid on top of them and the railroad track on top of the ties were open about six or eight inches apart. * * *

"There was nothing there to guard the snow from falling into the culvert and there was nothing on the side of it. More would fall on the two sides than between the ties. * * *

"As I traveled from the slaughter-house I traveled almost with the wind. I think the road runs almost East and West, running parallel with the railroad till in turning under the culvert, it runs almost north. As I turned into the culvert the wind came upon me from the West. * * *

"It bothered my seeing; it seemed as though when I got to the bridge there everything was worse when I got there. There seemed to be a perfect flurry of everything just as I was going into the culvert. I could just see a hole there, and I drove into it as I generally did, supposing everything was alright. I had always gone in there and through there hundreds of times before that time and supposed I was alright then or I would not have gone in the way I did." * * *

Q. When you last passed through this culvert previous to the time of this accident, what was the condition of the culvert then so far as the amount of snow contained in it, if any, was concerned?

A. It was about half full. x x x

Q. Do you have any recollection as to the distance between your head and the sills when you passed through the culvert that morning?

A. No sir, but I know there was

plenty of room.

Q. When you drove into the culvert, I understood you to say that it seemed to be simply a blur?

A. Yes sir. It kind of lifted up all the snow around me, like as if I was in a whirl storm.

Q. Were you able to see through the culvert?

A. No sir; because you come around a turn. Even when there is no snow on the ground, you cannot see through the culvert until you get right into it.

Q. How far is the turn from the culvert?

A. It is only a little piece. You turn right around the cabin there and turn right into the culvert. x x x

Q. Did you notice as you drove into that culvert, whether there had been any snow thrown off by the snow plow on the south side?

A. No Sir. I could not tell you positively whether there was or not any snow thrown in by that or not; except that I got in and got tied up. I observed there was a ridge on each side. x x x

Q. Are you prepared to state of your own knowledge Mr. Titus that the snow plows there had left any appreciable amount of snow at that culvert?

A. I am pretty sure. Yes sir.

Q. Are you prepared to say of your own knowledge?

A. Yes. x x x

Q. Did you endeavor to stop.

A. No sir. I didn't endeavor to stop. I didn't think what was the matter. I was holding on to the reins. I ducked my head. Then the other timber caught my shoulders and drove my breast down on my knees; I didn't have time for anything else; I was shut up in there just like a jack knife. It was all done in the snap of your finger.

Q. Having seen the snow plow pass over the track a short time before you passed into the culvert, did it not occur to you to stop and see whether there was any obstruction there?

A. No sir it never occurred to me at all; I didn't think of any danger. If I had thought of any danger I would surely have stopped. x x x

Q. You say Mr. Titus, with all the knowledge in your possession, that all the snow which was piled up there which contributed towards your accident, was the result of the snow plows or the wind?

A. Some of both.

Q. Which was the preponderating cause—the principal cause?

A. I should judge it to be the snow plows, because what fell from the snow plows would fall solid, and the soft snow I never had any trouble with that, but this snow was seemingly hard. Undoubtedly if it had been soft the horses would have pulled me through.

Decision of the Court.

A. H. Prentiss testified as follows:

Q. Was there much snow in the culvert at any time when you passed through it?

A. There was on the 5th of February. x x x

Q. You say you found considerable snow in the culvert?

A. Yes.

Q. Do you know how it got there?

A. I couldn't swear to it altogether.

Q. What do you know about it, if anything?

A. As I approached it, I found considerable soft snow on the north side; soft snow at first. As I went through, I came to a ridge of snow; then directly under the track it was lower; sagged underneath then raised again as I came out on the other side.

Q. Was that hard snow on the other side?

A. Yes.

Q. What did it look like?

A. A snow ball all broken, a good deal of unevenness about it. x x x

Q. Do you know anything about the railroad Company putting snow there? Have you ever seen snow dumped there by the railroad company in that culvert?

A. I have shoveled it into it and out of it.

Jacob Lambert testified as follows:

Q. How soon after the 15th day of February, if at all, did you see the culvert under which this road passes?

A. I passed that road once on the day of the 16th.

Q. Did you observe its condition with reference to snow?

A. I did sir. The culvert was in rather a bad condition.

Q. In what respect?

A. In snow, it was pretty well filled up.

Q. How was it at the openings on either side, on the north and on the south?

A. There was a bank of snow on each side of the track, under the track it was not as deep as on the sides.

Q. About what depth of snow was there on either side, on the north first?

A. I should judge about eight feet.

Q. And the depth on the other side?

(Continued on 2nd page).

Assessment Notice.

Red Oak Mining Company. Location of principal place of business Carson City, Nevada. Location of works Sierra County California. At a meeting of the Board of Trustees of the Red Oak Mining Company held at the office of the Company in Carson City, Nevada, this day of an assessment No. 42 of two (2) cents per share was levied upon the Capital stock of the Company issue and outstanding, payable immediately to the Secretary at the office of the Company in Carson City, Nevada. Tellingent May 6, 1895. Sale day (2 p. m.) June 5th, 1895. April 5, 1895. By order of the Board of Trustees, James R. Judge, Secretary.

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